



Department of Justice

THOMAS J. MILLER
ATTORNEY GENERAL

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515-281-5164
FACSIMILE: 515-281-4209

March, 2001

Dear City and County Attorneys,

I am writing to ask for your help and cooperation in enforcing Iowa's new tobacco laws.

Targeting some of the proceeds of the recent landmark settlement with the big tobacco companies that our office was able to secure, the State has enacted a comprehensive initiative aimed at reducing underage tobacco use. The new program is balanced and community-based. The new laws are even-handed with graduated civil fines and community service for underage tobacco users, criminal fines for clerks who sell tobacco to minors, and fines and graduated permit sanctions imposed on retailers who make tobacco available to persons under eighteen years of age.

As you know, the state of Iowa's Alcoholic Beverages Division (ABD) is providing enforcement funding which includes reimbursement for compliance checks of Iowa's approximately 6000 cigarette permit holders. Each retail permit holder will be checked twice before the end of the fiscal year, June 30, 2001. More than 150 city police and county sheriff departments have already contracted with ABD to enforce our new tobacco laws.

Regular and consistent enforcement will be the key to the success of our state's effort. Even though the State's new tobacco laws include some new provisions and penalties; the basic laws prohibiting minors from using tobacco and retailers from selling tobacco to minors have been on the books for many years. For a variety of reasons, these laws have not been enforced to the fullest extent.

That is why your effort will be so important. It is time we work together to enforce the law. I believe when we do so we will change the culture of tobacco use in Iowa. Currently, a thousand kids take up tobacco every month in Iowa. Five thousand Iowans die each year from tobacco related disease and illness, the vast majority of whom began smoking before the age of 18. Enforcing our tobacco laws now, will save lives in the future.

Much like our Area Prosecutions Division, I have dedicated resources that will now be available in the Attorney General's office to assist city and county attorneys in enforcing civil remedies against retailers who sell tobacco products to minors. I have appointed Assistant Attorneys General Kevin McCarthy and Donn Stanley to coordinate this area. As you are aware, retailer cigarette permits are issued and controlled primarily by local entities. Therefore, civil prosecutions to sanction the retailers will be pursued by city and county attorneys before the local licensing bodies, i.e., the city council or the board of supervisors. My office will now be available to you as you pursue these violations regarding tobacco laws and procedures. I believe it is in everyone's best interest to have local city and county attorneys pursue these civil actions wherever possible. However, when conflicts of interests occur, or where local attorneys are unable or unwilling to prosecute retail violators, then pursuant to Iowa Code section 453A.2(4), Kevin, Donn, or others under their direction, will request an appearance before local councils or boards to enforce the law. If you should have any questions, concerns or suggestions please do not hesitate to contact Kevin McCarthy or Donn Stanley at the addresses or phone numbers listed below.

Thank you for your help and cooperation on this important public health and law enforcement issue and for all the valuable public service you provide to the people of Iowa.

Sincerely,



Tom Miller
Attorney General

Kevin McCarthy
Attorney General's Office
1918 SE Hulsizer Road
Ankeny, IA 50021-3941
(515) 281-6656, fax (515) 281-7375
E-mail: kmccart@ag.state.ia.us

Donn Stanley
Attorney General's Office
1918 SE Hulsizer Road
Ankeny, IA 50021-3941
(515) 281-8480, fax (515) 281-7375
E-mail: dstanle@ag.state.ia.us

***IOWA
ATTORNEY GENERAL'S OFFICE***

***TOBACCO ENFORCEMENT
CIVIL PROSECUTION
PROCEDURES & LAWS
FOR
CITY & COUNTY ATTORNEYS***

OVERVIEW OF INCLUDED MATERIAL

- SUMMARY OF IOWA'S TOBACCO LAWS
- TOBACCO PROSECUTION FLOW CHART
- SAMPLE NOTICES OF HEARING
- SAMPLE HEARING COMPLAINTS
- SAMPLE ACKNOWLEDGEMENT / SETTLEMENT AGREEMENTS
- SAMPLE ORDERS TO PLACE BEFORE COUNCIL OR BOARD ACCEPTING AGREEMENT
- SAMPLE LETTER TO PLACE BEFORE COUNCIL OR BOARD WITH ORDER ACCEPTING AGREEMENT
- SAMPLE ORDERS TO PLACE BEFORE COUNCIL OR BOARD AFTER CONTESTED HEARINGS
- RELEVANT CASE LAW

SUMMARY OF IOWA'S TOBACCO LAWS

- A SUMMARY OF IOWA'S TOBACCO LAWS AND PENALTIES FOR RETAILERS, CLERKS, MINORS, AND ADULTS.



Department of Justice

THOMAS J. MILLER
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HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515-281-5164
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SUMMARY OF IOWA'S TOBACCO LAWS

Prepared By:

Kevin McCarthy
Assistant Attorney General
Iowa Department of Justice
515-281-6656

Donn Stanley
Assistant Attorney General
Iowa Department of Justice
515-281-8480

RELEVANT DEFINITIONS:

Retail Permit: Cigarette permits issued to retailers by their local licensing authority.

Person: Every individual, firm, association, joint stock company, syndicate, co-partnership, corporation, trustee, agency or receiver, or respective legal representative.

Cigarette Vending Machines: Any self-service device, that takes money and dispenses cigarettes or tobacco products.

Cigarettes: Any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, regardless of size or shape and regardless of the mix of ingredients. Cigars are excluded.

Tobacco Products: Cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smokeless tobacco, snuff, snuff flower, cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, or refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Cigarettes are excluded from this definition.

CIVIL PROSECUTION OF CIGARETTE PERMIT HOLDERS:

Retail Cigarette permits are issued and regulated locally, by city and county governments. Civil prosecution permit proceedings must occur before the permit issuing authority, i.e., city councils or county boards of supervisors.

If a RETAILER or an EMPLOYEE of a RETAILER has committed any of the following violations: 453A.22(2)

- Sells, gives, or otherwise supplies any tobacco, tobacco products, or cigarettes to an individual under the age of 18. 453A.2(1)
- Had vending machines that contain cigarettes or tobacco products located in a place where persons under 18 are present or permitted AT ANY TIME. 453A.36(6)

The following penalties shall be assessed:

- For a first violation, the retailer shall be assessed a civil penalty in the amount of \$300. Failure to pay this penalty as ordered shall result in automatic suspension of the permit for 14 days. 453A.22 (2)(a)
- For a second violation within a period of two years, the retailer's permit shall be suspended for a period of 30 days. 453A.22 (2)(b)
- For a third violation within a period of three years, the retailer's permit shall be suspended for a period of 60 days. 453A.22 (2)(c)
- For a fourth violation within a period of three years, the retailer's permit shall be revoked. 453A.22 (2)(d) If a permit is revoked a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority. 453A.22 (3)
Note however, if a retail permit is suspended or revoked, the suspension or revocation shall only apply to the place of business at which the violation occurred and shall not apply to any other place of business to which the retail permit applies but at which the violation did not occur. 453A.22 (2)(4)

CRIMINAL PROSECUTIONS OF EMPLOYEES OF A RETAILER:

An EMPLOYEE of a retailer who sells, gives, or otherwise supplies any tobacco, tobacco products, or cigarettes to any individual under the age of 18, is guilty of a simple misdemeanor. 453A.3 (1)(b).

-The scheduled penalty fine is set out in 805.8(11)(b)

(1) For a first violation, the scheduled fine is \$100

(2) For a second violation, the scheduled fine is \$250

(3) For a third or subsequent violation, the scheduled fine is \$500

CRIMINAL PROSECUTION OF PERSONS OTHER THAN A RETAILER (ADULTS):

A person, OTHER THAN A RETAILER, who sells, gives, or otherwise supplies any tobacco, tobacco products, or cigarettes to any individual under the age of 18, is guilty of a simple misdemeanor. 453A.3(1)(a)

CIVIL PROSECUTION OF PERSONS UNDER 18:

A PERSON under 18 years of age shall not smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes. 453A.2(2)

Note: a court appearance is required for these violations because of the community work requirements. Note: the juvenile court does not have jurisdiction.

-For a first violation, the fine is \$50. 805.8(11)(c)(1). And performance of 8 hours of community work requirements, unless this is waived by the court. 453A.3 (2)(b).

-For a second violation, the fine is \$100. 805.8(11)(c)(2). And performance of 12 hours of community work requirements. 453A.3(2)(c). There is no provision that allows for a waiver of community work requirements on the second offense.

-For a third or subsequent violation, the fine is \$250. 805.8(11)(c)(3). And the performance of 16 hours of community work requirements. 453A.3(2)(d). There is no provision that allows for a waiver of community work requirements on the third or subsequent offense.

All of these penalties are CIVIL, not criminal. Also, the criminal penalty surcharge under 911.2 cannot be imposed for these violations. In addition, court costs pursuant to 805.9(6) cannot be imposed. 805.8 (11)(c).

CRIMINAL PROSECUTION OF PERSONS UNDER 18:

A PERSON under 18 years of age who alters or displays or has in their possession a fictitious or fraudulently altered driver's license or a non-operator's id card, and who uses this license or card to smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes, commits a simple misdemeanor punishable by a fine of \$100. 321.216C.

-An employer of a retailer who reasonably believes they have been presented with a false or altered license or I.D. may seize it. If they do this, they then must attempt to issue a receipt to the person listing that time and date. Furthermore, they must then turn it over to their local law enforcement officials within 24 hours. 453A.4 (1)

IMMUNITY FOR PERSONS UNDER 18:

A PERSON under 18 years of age who possesses cigarettes or tobacco products as part of their employment, does not commit a violation if the employer has a valid cigarette permit or lawfully offers for sale cigarettes or tobacco products. 453A.2(3). (Note: This immunity is limited to a minor being able to possess cigarettes or tobacco products as part of their employment. The minor is still liable criminally if he or she sells to minors.)

A PERSON under 18 years of age who participates in compliance checks of retailers under the supervision of a "peace officer" does not commit a violation. 453A.2(6).

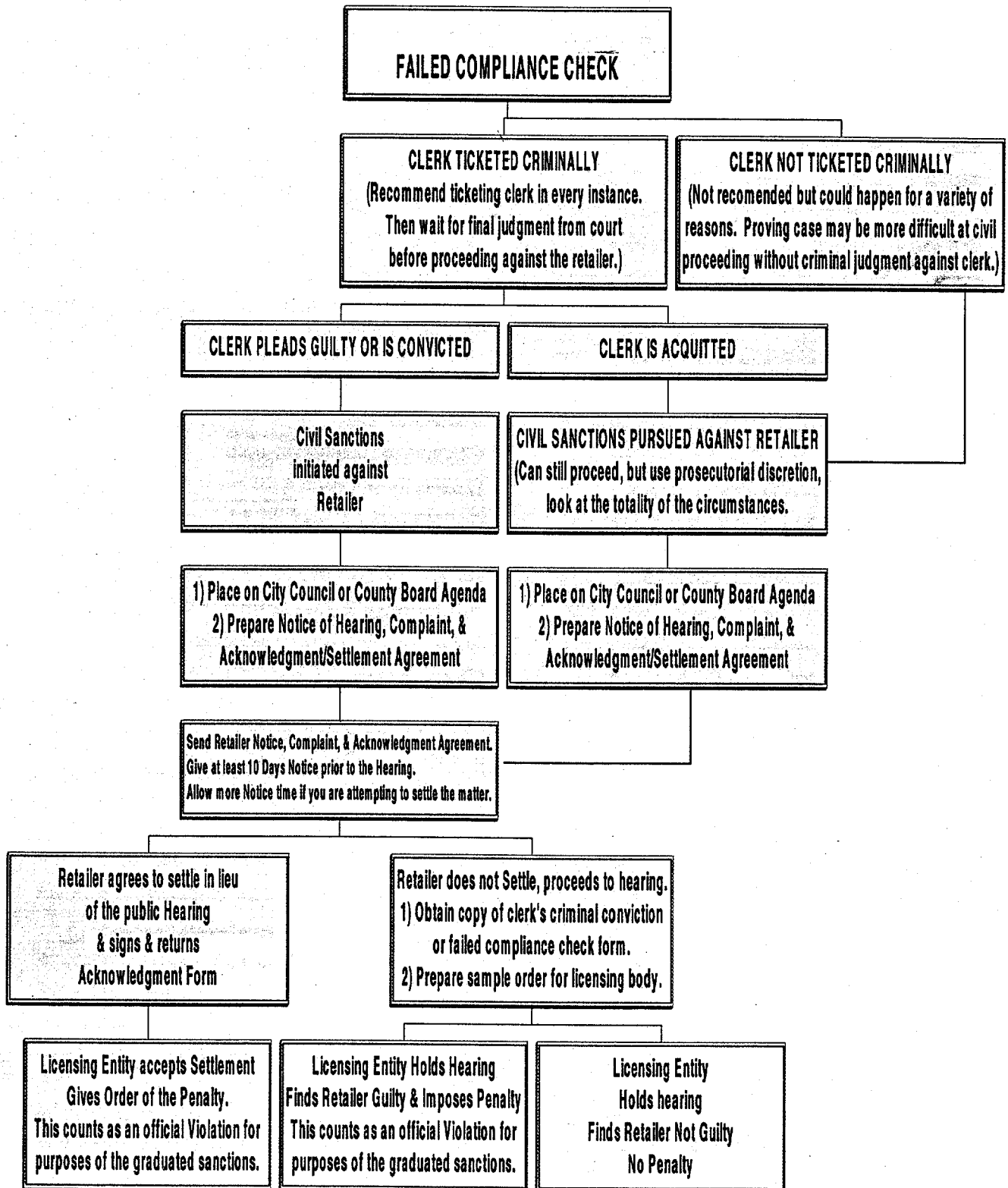
-The definition of a peace officer is listed in 801.4. As well as in 453A.2(4).

TOBACCO PROSECUTION FLOW CHART FOR CIVIL PROSECUTION OF CIGARETTE PERMIT HOLDERS

- IMMEDIATELY AFTER A FAILED COMPLIANCE CHECK, THE CLERK SHOULD BE CRIMINALLY TICKETED.
- IT IS BEST TO WAIT FOR THE CLERK TO EITHER PLEAD GUILTY OR BE CONVICTED BEFORE PROCEEDING AGAINST THE RETAILER.
- THEN USE THIS FINAL JUDGEMENT FROM THE COURT AS THE EVIDENCE AGAINST RETAILER.
- REFER TO CASE AT END OF MANUAL ALLOWING VICARIOUS LIABILITY IN CIVIL PROCEEDING WHEN THERE HAS BEEN A CRIMINAL CONVICTION.

TOBACCO PROSECUTION FLOW CHART

Prepared by the Iowa Attorney General's Office



SAMPLE NOTICES OF HEARING 1ST, 2ND, 3RD, & 4TH VIOLATIONS

- NOTICES OF HEARING SHOULD BE SENT TO PERMIT HOLDER GIVING AT LEAST TEN DAYS NOTICE PRIOR TO HEARING DATE.
- MORE NOTICE TIME IS RECOMMENDED WHEN ATTEMPTING TO SETTLE.
- INCLUDE WITH NOTICE, THE COMPLAINT AND THE SETTLEMENT / ACKNOWLEDGEMENT AGREEMENT.

SAMPLE NOTICE OF HEARING
1ST VIOLATION

Date

Permit Holder

Address

City, Iowa Zip

RE: Retail Business Name

Retail Business Address

City, Iowa Zip

The CITY or COUNTY has scheduled a hearing before the City Council or County Board of Supervisors at Time on Day of Week, Month, Day, 2001, City Council Chambers or County Supervisors' Board Room. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the mandatory \$300 civil penalty prescribed by 453A.22(2)(a) for the violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment / Settlement Agreement, returning the original copy, properly signed and dated, to City or County Attorney, Address, no later than (10) business days prior to the hearing date. With this Acknowledgment / Settlement Agreement, you must include a check in the amount of \$300, made out to the "City or County". This will satisfy the penalty for a first violation under Iowa Code section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at 515-555-5555, or if you have obtained representation by an attorney in this matter, he/she should contact me.

City or County Attorney

Address

515-555-5555

SAMPLE NOTICE OF HEARING
2ND VIOLATION

Date

Permit Holder

Address

City, Iowa Zip

RE: Retail Business Name
Retail Business Address
City, Iowa Zip

The CITY or COUNTY has scheduled a hearing before the City Council or County Board of Supervisors at Time on Day of Week, Month, Day, 2001, City Council Chambers or County Supervisors' Board Room. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the mandatory civil penalty of a thirty-day cigarette permit suspension prescribed by 453A.22(2)(b) for a second violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you must complete the attached Acknowledgment / Settlement Agreement, returning the original copy, properly signed and dated, to City or County Attorney, Address, no later than (10) business days prior to the hearing date. Accepting and abiding by the terms of the Acknowledgment / Settlement Agreement will satisfy the penalty for a second violation under Iowa Code section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at 515-555-5555, or if you have obtained representation by an attorney in this matter, he/she should contact me.

City or County Attorney

Address

515-555-5555

SAMPLE NOTICE OF HEARING
3rd VIOLATION

Date

Permit Holder
Address
City, Iowa Zip

RE: Retail Business Name
Retail Business Address
City, Iowa Zip

The CITY or COUNTY has scheduled a hearing before the City Council or County Board of Supervisors at Time on Day of Week, Month, Day, 2001, City Council Chambers or County Supervisors' Board Room. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the mandatory civil penalty of a sixty-day cigarette permit suspension prescribed by 453A.22(2)(c), for a third violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you must complete the attached Acknowledgment / Settlement Agreement, returning the original copy, properly signed and dated, to City or County Attorney, Address, no later than (10) business days prior to the hearing date. Accepting and abiding by the terms of the Acknowledgment / Settlement Agreement will satisfy the penalty for a third violation under Iowa Code section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at 515-555-5555, or if you have obtained representation by an attorney in this matter, he/she should contact me.

City or County Attorney
Address
515-555-5555

SAMPLE NOTICE OF HEARING
4th VIOLATION

Date

Permit Holder
Address
City, Iowa Zip

RE: Retail Business Name
Retail Business Address
City, Iowa Zip

The CITY or COUNTY has scheduled a hearing before the City Council or County Board of Supervisors at Time on Day of Week, Month, Day, 2001, City Council Chambers or County Supervisors' Board Room. The hearing complaint, which has been filed against you, is attached. Be advised that this proceeding is to officially revoke your cigarette permit.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the revocation of your cigarette permit as prescribed by 453A.22(2)(d), for a fourth violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you choose not to contest your permit revocation, you, or your attorney if you have obtained representation in this matter, should contact me at 515-555-5555 no later than (10) business days prior to the hearing date.

City or County Attorney
Address
555-555-5555

SAMPLE HEARING COMPLAINTS 1ST, 2ND, 3RD & 4TH VIOLATIONS

- SEND HEARING COMPLAINT ALONG WITH NOTICE OF HEARING LETTER AND SETTLEMENT / ACKNOWLEDGEMENT AGREEMENT.

SAMPLE HEARING COMPLAINT

1ST VIOLATION

IN RE;
Permit Holder
Address
City, Iowa Zip

HEARING COMPLAINT

The CITY OR COUNTY hereby makes the following complaint against the above-named permittee.

1. Iowa Code section 453A.2(1) provides that a person shall not "sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age."
2. Iowa Code section 453A.22 (2)(a) provides that if a permit holder or employee of a permit holder has violated Iowa Code section 453A.2 (1), the permit holder shall be assessed a civil penalty of three hundred dollars (\$300.00) for a first violation of Iowa Code section 453A.2 (1).
3. On or about *Month, Day, 20XX*, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the *Compliance Check or Criminal Conviction* is attached and incorporated herein.

4. Therefore, in accordance with Iowa law, the CITY OR COUNTY requests the Blank City Council or the Blank County Board of Supervisors find a violation of the above-referenced sections of Iowa Code chapter 453A and assess a civil penalty in the amount of three hundred dollars (\$300.00) against *Blank (the retail permit-holder)*.

CITY OR COUNTY ATTORNEY
ADDRESS
PHONE

SAMPLE HEARING COMPLAINT

2nd VIOLATION

IN RE;
Permit Holder
Address
City, Iowa Zip

HEARING COMPLAINT

The CITY OR COUNTY hereby makes the following complaint against the above-named permittee.

1. Iowa Code section 453A.2(1) provides that a person shall not "sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age."
2. Iowa Code section 453A.22 (2)(b) provides that if a permit holder or employee of a permit holder has violated Iowa Code section 453A.2 (1), the permit holder shall be assessed a civil penalty of a thirty day cigarette permit suspension for a second violation of Iowa Code section 453A.2 (1).
3. On or about *Month, Day, 20XX*, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the *Compliance Check or Criminal Conviction* is attached and incorporated herein.

4. On *Month, Day, Year*, the permittee was issued a sanction for a first violation of Iowa Code section 453A.2.
5. Therefore, in accordance with Iowa law, the CITY OR COUNTY requests the Blank City Council or the Blank County Board of Supervisors find a violation of the above-referenced sections of Iowa Code chapter 453A and assess a civil penalty of a thirty day cigarette permit suspension against *Blank (the retail permit-holder)*.

CITY OR COUNTY ATTORNEY
ADDRESS
PHONE

SAMPLE HEARING COMPLAINT

3rd VIOLATION

IN RE;
Permit Holder
Address
City, Iowa Zip

HEARING COMPLAINT

The CITY OR COUNTY hereby makes the following complaint against the above-named permittee.

1. Iowa Code section 453A.2(1) provides that a person shall not "sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age."
2. Iowa Code section 453A.22 (2)(c) provides that if a permit holder or employee of a permit holder has violated Iowa Code section 453A.2 (1), the permit holder shall be assessed a civil penalty of a thirty day cigarette permit suspension for a second violation of Iowa Code section 453A.2 (1).
3. On or about *Month, Day, 20XX*, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the *Compliance Check or Criminal Conviction* is attached and incorporated herein.

4. On *Month, Day, Year*, the permittee was issued a sanction for a first violation of Iowa Code section 453A.2. On *Month, Day, Year*, the permittee was issued a sanction for a second violation of Iowa Code section 453A.2.
5. Therefore, in accordance with Iowa law, the CITY OR COUNTY requests the Blank City Council or the Blank County Board of Supervisors find a violation of the above-referenced sections of Iowa Code chapter 453A and assess a civil penalty of a thirty day cigarette permit suspension against *Blank (the retail permit-holder)*.

CITY OR COUNTY ATTORNEY
ADDRESS
PHONE

SAMPLE HEARING COMPLAINT 4TH VIOLATION

IN RE;
Permit Holder
Address
City, Iowa Zip

HEARING COMPLAINT

The CITY OR COUNTY hereby makes the following complaint against the above-named permittee.

1. Iowa Code section 453A.2(1) provides that a person shall not "sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age."
2. Iowa Code section 453A.22 (2)(d) provides that if a permit holder or employee of a permit holder has violated Iowa Code section 453A.2 (1), the permit holder shall be assessed a civil penalty of a cigarette permit revocation for a fourth violation of Iowa Code section 453A.2 (1).
3. On or about *Month, Day, 20XX*, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the *Compliance Check or Criminal Conviction* is attached and incorporated herein.

4. On *Month, Day, Year*, the permittee was issued a sanction for a first violation of Iowa Code section 453A.2. On *Month, Day, Year*, the permittee was issued a sanction for a second violation of Iowa Code section 453A.2. On *Month, Day, Year*, the permittee was issued a sanction for a third violation of Iowa Code section 453A.2.
5. Therefore, in accordance with Iowa law, the CITY OR COUNTY requests the Blank City Council or the Blank County Board of Supervisors find a violation of the above-referenced sections of Iowa Code chapter 453A and assess a civil penalty of a cigarette permit revocation against *Blank (the retail permit-holder)*.

CITY OR COUNTY ATTORNEY
ADDRESS
PHONE

SAMPLE ACKNOWLEDGEMENT SETTLEMENT AGREEMENTS 1ST, 2ND, 3RD & 4TH VIOLATIONS

- SEND ACKNOWLEDGEMENT
SETTLEMENT AGREEMENT
ALONG WITH THE HEARING
COMPLAINT AND THE NOTICE OF
HEARING LETTER.

**SAMPLE ACKNOWLEDGMENT / SETTLEMENT
AGREEMENT
1ST VIOLATION**

IN RE;
Permit Holder
Address
City, Iowa Zip

**ACKNOWLEDGMENT /
SETTLEMENT
AGREEMENT**

ACKNOWLEDGMENT / SETTLEMENT AGREEMENT

I (we) hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I (we) hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I (we) hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I (we) understand that this penalty will count as an official "First Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I (we) have enclosed a check for the amount of \$300 made payable to the "CITY OR COUNTY" to settle the above referenced complaint.

DATE

NOTE: This must be signed by an individual cigarette permittee, or in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this ACKNOWLEDGMENT / SETTLEMENT AGREEMENT and waive your appearance at a hearing, this document, properly signed and dated, along with your \$300 check made payable to the "CITY OR COUNTY", should be returned to: CITY OR COUNTY ATTORNEY, ADDRESS.

**SAMPLE ACKNOWLEDGMENT / SETTLEMENT
AGREEMENT
2nd VIOLATION**

IN RE;
Permit Holder
Address
City, Iowa Zip

**ACKNOWLEDGMENT /
SETTLEMENT
AGREEMENT**

ACKNOWLEDGMENT / SETTLEMENT AGREEMENT

I (we) hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I (we) hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I (we) hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I (we) understand that this penalty will count as an official "Second Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I (we) understand that the penalty for this second violation is a suspension of my (our) cigarette permit for 30 days, beginning on the date that will be specified in the official city / county order that I will receive.

DATE

NOTE: This must be signed by an individual cigarette permittee, or in the case of a business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this ACKNOWLEDGMENT / SETTLEMENT AGREEMENT and waive your appearance at a hearing, this document, properly signed and dated should be returned to: CITY OR COUNTY ATTORNEY, ADDRESS.

**SAMPLE ACKNOWLEDGMENT / SETTLEMENT
AGREEMENT
3rd VIOLATION**

IN RE;
Permit Holder
Address
City, Iowa Zip

**ACKNOWLEDGMENT /
SETTLEMENT
AGREEMENT**

ACKNOWLEDGMENT / SETTLEMENT AGREEMENT

I (we) hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I (we) hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I (we) hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I (we) understand that this penalty will count as an official "Third Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I (we) understand that the penalty for this third violation is a suspension of my (our) cigarette permit for 60 days, beginning on the date that will be specified in the official city / county order that I will receive.

DATE

NOTE: This must be signed by an individual cigarette permittee, or in the case of a business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this ACKNOWLEDGMENT / SETTLEMENT AGREEMENT and waive your appearance at a hearing, this document, properly signed and dated should be returned to: CITY OR COUNTY ATTORNEY, ADDRESS.

**SAMPLE ACKNOWLEDGMENT / SETTLEMENT
AGREEMENT
4th VIOLATION**

IN RE;
Permit Holder
Address
City, Iowa Zip

**ACKNOWLEDGMENT /
SETTLEMENT
AGREEMENT**

ACKNOWLEDGMENT / SETTLEMENT AGREEMENT

I (we) hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I (we) hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I (we) hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I (we) understand that this penalty will count as an official "Fourth Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I (we) understand that the penalty for this fourth violation is revocation of my (our) cigarette permit, beginning on the date that will be specified in the official city / county order that I will receive. I (we) understand that no individual may apply for a new cigarette permit for this location (address) until at least 1 year has passed, unless good cause can be shown to the contrary.

DATE

NOTE: This must be signed by an individual cigarette permittee, or in the case of a business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this ACKNOWLEDGMENT / SETTLEMENT AGREEMENT and waive your appearance at a hearing, this document, properly signed and dated should be returned to: CITY OR COUNTY ATTORNEY, ADDRESS.

**SAMPLE ORDERS TO PLACE
BEFORE COUNCIL OR BOARD
ACCEPTING AGREEMENT
1ST, 2ND, 3RD, & 4TH VIOLATIONS.**

- AFTER RECEIVING SIGNED
SETTLEMENT AGREEMENT,
PLACE ORDER BEFORE
COUNCIL OR BOARD
ACCEPTING AGREEMENT.

SAMPLE ORDER ACCEPTING ACKNOWLEDGMENT /
SETTLEMENT AGREEMENT
1ST VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:

Retailer
Address
City, Iowa, Zip

**ORDER
ACCEPTING
ACKNOWLEDGMENT /
SETTLEMENT AGREEMENT**

ON this ____ day of ____ Month, 2001, in lieu of a public hearing on the matter, the ____ City Council / ____ County Board of Supervisors approves the attached Acknowledgment / Settlement Agreement between the above captioned permittee and the CITY OR COUNTY.

Therefore, the ____ City Council / ____ County Board of Supervisors, FINDS that the above captioned permittee has remitted to the "CITY OR COUNTY", a civil penalty in the amount of three hundred dollars (\$300.00). Be advised that this sanction will count as a first violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(a). IT IS THEREFORE ORDERED that the judgment in this matter is hereby satisfied.

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ACCEPTING ACKNOWLEDGMENT /
SETTLEMENT AGREEMENT
2nd VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:

Retailer

Address

City, Iowa, Zip

**ORDER
ACCEPTING
ACKNOWLEDGMENT /
SETTLEMENT AGREEMENT
SECOND VIOLATION**

ON this ____ day of ____ Month, 2001, in lieu of a public hearing on the matter, the _____ City Council / _____ County Board of Supervisors approves the attached Acknowledgment / Settlement Agreement between the above captioned permittee and the CITY OR COUNTY.

Pursuant to the Agreement, IT IS THEREFORE ORDERED that a civil penalty of a thirty (30) day cigarette permit suspension be executed against the above captioned permittee effective (xyz future date). This sanction will count as a second violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(b).

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ACCEPTING ACKNOWLEDGMENT /
SETTLEMENT AGREEMENT
3rd VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:

Retailer
Address
City, Iowa, Zip

**ORDER
ACCEPTING
ACKNOWLEDGMENT /
SETTLEMENT AGREEMENT
THIRD VIOLATION**

ON this ____ day of ____ Month, 2001, in lieu of a public hearing on the matter, the _____ City Council / _____ County Board of Supervisors approves the attached Acknowledgment / Settlement Agreement between the above captioned permittee and the CITY OR COUNTY.

Pursuant to the Agreement, IT IS THEREFORE ORDERED that a civil penalty of a sixty (60) day cigarette permit suspension be executed against the above captioned permittee effective (xyz future date). This sanction will count as a third violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(c).

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ACCEPTING ACKNOWLEDGMENT /
SETTLEMENT AGREEMENT
4th VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:

Retailer
Address
City, Iowa, Zip

**ORDER
ACCEPTING
ACKNOWLEDGMENT /
SETTLEMENT AGREEMENT
FOURTH VIOLATION**

ON this ____ day of ____ Month, 2001, in lieu of a public hearing on the matter, the _____ City Council / _____ County Board of Supervisors approves the attached Acknowledgment / Settlement Agreement between the above captioned permittee and the CITY OR COUNTY.

Pursuant to the Agreement, IT IS THEREFORE ORDERED that a civil penalty of cigarette permit REVOCATION be executed against the above captioned permittee effective (xyz future date). Furthermore, it is ordered that no person or entity be granted a new cigarette permit for this location (address) until at least 1 year has passed, unless good cause to the contrary can be shown.

Mayor or Chairperson of the Board of Supervisors

SAMPLE LETTER TO PLACE BEFORE COUNCIL OR BOARD WITH ORDER ACCEPTING AGREEMENT

- AFTER RECEIVING A SIGNED ACKNOWLEDGMENT/ SETTLEMENT AGREEMENT, THIS LETTER CAN BE SENT TO THE COUNCIL OR BOARD ALONG WITH THE AGREEMENT AND THE PROPOSED ORDER.

Date

**RE:
Permittee
Address
City, State, Zip**

Dear City Council / County Board of Supervisors,

I have received a signed Acknowledgment / Settlement Agreement regarding the violation of tobacco laws by the above captioned permittee. A copy is enclosed for your records.

I have also enclosed an Order form, accepting this agreement in lieu of a public hearing and concluding this matter. Please approve and sign this Order at your next regularly scheduled meeting. The Original signed order should then be sent to the permit holder. A copy should be returned to me, City or County Attorney, Address.

Thank you for your assistance. Please call if you have any questions at 555-5555.

Sincerely,

City or County Attorney

SAMPLE ORDERS TO PLACE BEFORE COUNCIL OR BOARD ASSESSING PENALTIES AFTER CONTESTED HEARINGS

- THESE ORDERS MAY BE
PLACED BEFORE THE COUNCIL
OR BOARD AFTER A
CONTESTED HEARING.

SAMPLE ORDER ASSESSING PENALTY
1ST VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:

Retailer
Address
City, Iowa, Zip

**ORDER
ASSESSING PENALTY
FIRST VIOLATION**

ON this ____ day of ____ Month, 2001, after a public hearing on the matter, the ____ City Council / ____ County Board of Supervisors finds that based upon evidence submitted by the CITY OR COUNTY Attorney's Office, the above captioned permittee committed a violation of Iowa Code Section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

THEREFORE, the ____ City Council / ____ County Board of Supervisors, hereby orders that a civil penalty be remitted by the above captioned permittee, to the CITY OR COUNTY, check made payable to the "CITY OR COUNTY" on or before month, day, 2001(30 days from the date of this order). This sanction will count as a first violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(a). Be advised that failure to pay the civil penalty by this date shall result in the automatic permit suspension for a period of fourteen (14) days.

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ASSESSING PENALTY
2nd VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:

Retailer
Address
City, Iowa, Zip

ORDER
ASSESSING PENALTY
SECOND VIOLATION

ON this ____ day of ____ Month, 2001, after a public hearing on the matter, the ____ City Council / ____ County Board of Supervisors finds that based upon evidence submitted by the CITY OR COUNTY Attorney's Office, the above captioned permittee committed a second violation of Iowa Code Section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

THEREFORE, the ____ City Council / ____ County Board of Supervisors, hereby orders that a civil penalty of a Thirty (30) day cigarette permit suspension be executed against the above captioned permittee effective (xyz future date). This sanction will count as a second violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(b).

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ASSESSING PENALTY
3rd VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:

Retailer
Address
City, Iowa, Zip

ORDER
ASSESSING PENALTY
THIRD VIOLATION

ON this ____ day of ____ Month, 2001, after a public hearing on the matter, the ____ City Council / ____ County Board of Supervisors finds that based upon evidence submitted by the CITY OR COUNTY Attorney's Office, the above captioned permittee committed a third violation of Iowa Code Section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

THEREFORE, the ____ City Council / ____ County Board of Supervisors, hereby orders that a civil penalty of a Sixty (60) day cigarette permit suspension be executed against the above captioned permittee effective (xyz future date). This sanction will count as a third violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(c).

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ASSESSING PENALTY
4th VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:

Retailer
Address
City, Iowa, Zip

**ORDER
ASSESSING PENALTY
FOURTH VIOLATION**

ON this ____ day of _____ Month, 2001, after a public hearing on the matter, the _____ City Council / _____ County Board of Supervisors finds that based upon evidence submitted by the CITY OR COUNTY Attorney's Office, the above captioned permittee committed a fourth violation of Iowa Code Section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

THEREFORE, the _____ City Council / _____ County Board of Supervisors, hereby orders that a civil penalty of cigarette permit revocation pursuant to Iowa Code Section 453A.22(2)(d) be executed against the above captioned permittee effective (xyz future date). Furthermore, it is ordered that no person or entity be granted a new cigarette permit for this location (address) until at least 1 year has passed, unless good cause to the contrary can be shown.

Mayor or Chairperson of the Board of Supervisors

RELEVANT CASE LAW

RELEVANT CASE LAW

Randall's International Inc. v. Hearing Board of the Iowa Beer & Liquor Control Dept., 429 N.W.2d 163 (Iowa 1988).

Facts: Randall's suffered a suspension of its liquor license as a result of a criminal conviction of a non-managerial employee for selling liquor to a minor during a "sting" operation.

Holding: The Court found the Iowa statute permitted administrative sanctions against the licensee without direct managerial culpability. Furthermore, the Court found the statute did not offend the due process rights of Randall's.